

**United States Department of Labor
Employees' Compensation Appeals Board**

D.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Boonsboro, MD, Employer**

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**Docket No. 19-0716
Issued: September 13, 2019**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 19, 2019 appellant filed a timely appeal of the February 4, 2019 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained a left shoulder injury on November 16, 2018 in the performance of duty, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the February 4, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On November 20, 2018 appellant, then a 64-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 16, 2018 she sustained a right shoulder strain when she missed a step at the loading dock and fell on the pavement while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she was in the performance of duty when the incident occurred. Appellant stopped work the date of injury.

OWCP received a work injury and work status medical report dated November 17, 2018 from Dr. Gaylen Johnson, a Board-certified physician specializing in occupational medicine. Dr. Johnson noted that appellant experienced pain when moving her right arm and recommended that she remain off work until an orthopedic consultation.

A November 19, 2018 x-ray of the right shoulder, performed by Dr. Harris Elliot Orzach, a Board-certified radiologist, demonstrated a bony fragment consistent with a bony Bankart lesion. Dr. Orzach recommended that appellant undergo a magnetic resonance imaging (MRI) scan for further evaluation. In a report dated November 20, 2018, Dr. Johnson agreed with Dr. Orzach's x-ray findings and noted that he would refer appellant to an orthopedic specialist for further evaluation.

On December 14, 2018 Dr. Scott Worrell, a Board-certified orthopedic specialist, ordered an MRI scan of appellant's right shoulder and noted diagnoses of contusion, displaced fracture and pain of the right shoulder.

In a December 20, 2018 attending physician's report (Form CA-20), Dr. Worrell diagnosed a fracture of the glenoid cavity of appellant's right shoulder. He noted an injury date of November 16, 2018 and checked a box marked "yes" indicating that the diagnosed condition was caused or aggravated by the November 16, 2018 slip and fall directly on her right shoulder. Dr. Worrell opined that appellant was totally disabled for the period November 16, 2018 through January 21, 2019.

In a December 31, 2018 development letter, OWCP noted that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Based on this criteria, it had administratively approved payment of a limited amount of medical expenses without formally considering the merits of her claim. OWCP reopened the claim as appellant had not yet returned to work full time and advised her of the deficiencies of her claim. It requested additional factual and medical evidence from her and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a January 8, 2019 statement, wherein she explained that when going to put a tray of mail into her truck, she tripped and fell off the steps onto the blacktop injuring her right arm. She identified L.T. as a person who witnessed her fall and went to get her manager, R.W., to help her off the ground. Appellant explained that she took off from work the following day and administered a topical cream to her arm to relieve the pain, to no effect. She called R.W. on Monday (November 19, 2018) and was sent to Dr. Johnson. Appellant indicated that she had an x-ray of her arm and was advised she had a "chipped bone." She subsequently saw

an orthopedic surgeon who ordered an MRI scan and held her off work pending the results of the MRI scan.

By decision dated February 4, 2019, OWCP denied appellant's traumatic injury claim, finding that she had not submitted the necessary factual evidence to establish that the incident occurred as described. Specifically, it indicated that she failed to provide a reason for her delay in reporting her November 16, 2018 injury until November 20, 2018.³ OWCP explained that in order to substantiate the factual elements of her claim, appellant needed to respond and submit her answers as requested. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁸ Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁹ The second component is whether the employment incident caused a personal injury.¹⁰

³ Appellant's Form CA-1 indicated that she first provided notice of her injury on November 19, 2018.

⁴ *Supra* note 1.

⁵ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that the November 16, 2018 employment incident occurred as described.

On her November 20, 2018 claim form, appellant alleged that on November 16, 2018 she sustained a right shoulder injury when she missed a step and fell on the loading dock pavement while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty that day. In a December 31, 2018 development letter, OWCP requested additional factual and medical evidence and provided a questionnaire for appellant's complete. In response, appellant submitted a handwritten statement at the bottom of OWCP's questionnaire where she again described the circumstances of her alleged November 16, 2018 work injury. Additionally, she explained that the reason for the three-day delay in reporting her injury to her supervisor was because she took time off from work following her injury. Appellant also submitted medical evidence where she consistently reported to her physicians a November 16, 2018 date of injury involving her right shoulder.

In its February 4, 2019 decision, OWCP found that appellant had not submitted sufficient evidence to establish that the claimed event occurred as she described and noted that appellant failed to provide a reason for her delay in reporting her November 16, 2018 injury until November 20, 2018. However, the Board finds that the evidence does not contain inconsistencies sufficient to cast serious doubt on appellant's version of the occurrence of the employment incident. As noted, an employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹² The Board finds that appellant's reasoning for the delay in reporting her claimed November 16, 2018 injury has not been refuted by strong or persuasive evidence and there are no inconsistencies to cast doubt on her version of the employment incident.¹³ Therefore, the Board finds that

¹¹ C.R., Docket No. 18-1332 (issued February 13, 2019); *Gregory J. Reser*, 57 ECAB 277 (2005).

¹² *Id.*

¹³ C.V., Docket No. 15-0615 (issued September 13, 2016).

appellant has met her burden of proof to establish that the November 16, 2018 employment incident occurred as described.

As appellant has established that the November 16, 2018 employment incident occurred as alleged, further consideration of the medical evidence is necessary.¹⁴ For these reasons, the case will be remanded to OWCP to evaluate the medical evidence and determine whether she sustained a medical condition or disability causally related to the accepted November 16, 2018 employment incident.¹⁵ After any further development as it deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a traumatic injury in the performance of duty on November 16, 2018, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: September 13, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ *M.D.*, Docket No. 18-1365 (issued March 12, 2019).

¹⁵ See *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).